

# Order

Entered: April 23, 2002

2001-24

Amendment of Rule 6.302  
of the Michigan Court Rules

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## Michigan Supreme Court Lansing, Michigan

Maura D. Corrigan,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, Rule 6.302 of the Michigan Court Rules is amended, effective September 1, 2002.

[The present language is amended as indicated below.]

### **Rule 6.302 Pleas of Guilty and Nolo Contendere**

(A) [Unchanged.]

(B) An Understanding Plea. Speaking directly to the defendant, the court must advise the defendant and determine that the defendant understands:

(1) - (5) [Unchanged.]

(6) if the plea is accepted, ~~and the defendant is financially unable to retain a lawyer, the court must appoint a lawyer to represent the defendant on appeal if not entitled to have counsel appointed at public expense to assist in filing an application for leave to appeal or to assist with other postconviction remedies unless the defendant is financially unable to retain counsel and~~

(a) the defendant's sentence exceeds the ~~upper limit of the minimum sentence range of the applicable sentencing guidelines,~~

(b) the ~~plea is~~ defendant ~~seeks leave to appeal a~~ conditional plea under MCR 6.301(C)(2),

- (c) the prosecuting attorney seeks leave to appeal, or
  - (d) the Court of Appeals or the Supreme Court grants ~~the defendant's application for leave to appeal, and~~
- ~~(7) if the plea is accepted and the defendant is financially unable to retain a lawyer, the court, in its discretion, may appoint a lawyer to represent the defendant on appeal if all the following apply:~~
- ~~(a) the defendant seeks leave to appeal on the basis of an alleged improper scoring of an offense variable or a prior record variable,~~
  - ~~(b) the defendant objected to the scoring or otherwise preserved the matter for appeal, and~~
  - ~~(c) the sentence constitutes an upward departure from the upper limit of the minimum sentence range that the defendant alleges should have been scored.~~

~~With regard to paragraphs (6) and (7), the court is required to give only the advice that is applicable to the particular circumstances.~~

(C) - (F) [Unchanged.]

Cavanagh, J. (*dissenting*). This amendment is ill-advised and, at the least, premature in light of the pending Sixth Circuit Court of Appeals' review of this issue in *Tesmer v Granholm*, Docket Nos. 00-1824 and 00-1845.

Kelly, J. I join in the dissenting statement of Justice Cavanagh.

Staff Comment: The April 23, 2002 amendment of MCR 6.302(B), effective September 1, 2002, shortens the advice given at plea proceedings regarding an "understanding plea" by eliminating the requirement that the court list the circumstances in which it has discretion to appoint counsel at public expense. That advice remains in MCR 6.425(E)(2)(c).

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.